

1 TERRY GODDARD
Attorney General
2 (Firm State Bar No. 14000)

3 SETH T. HARGRAVES
Assistant Attorney General
4 State Bar No. 020176
1275 W. Washington, CIV/LES
5 Phoenix, Arizona 85007-2997
Tel: (602) 542-7033
6 Fax: (602) 364-3202

7 Attorneys for the Arizona State Board of Pharmacy

8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**
9

10 In the Matter of

11 **ERIC KESTERSON,**

12 Holder of License No. 1752
As a Pharmacy Technician
13 In the State of Arizona

Board Case No. 07-0038-PHR

**CONSENT AGREEMENT
FOR STAYED REVOCATION -
PROBATION**

14
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the
17 public interest, statutory requirements and the responsibilities of the Arizona State Board
18 of Pharmacy ("Board") and under A.R.S. §§ 32-1901, *et. seq.* and 41-1092.07(F)(5), Eric
19 Kesterson ("Respondent"), holder of Pharmacy Technician License Number 1752 in the
20 State of Arizona, and the Board enter into the following Recitals, Findings of Fact,
21 Conclusions of Law and Order ("Consent Agreement") as a final disposition of this
22 matter.

23 1. Respondent has read and understands this Consent Agreement and has had
24 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
25 opportunity to discuss this Consent Agreement with an attorney.
26

1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing he could present
3 evidence and cross examine witnesses. By entering into this Consent Agreement,
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against him.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3248 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. All admissions made by the Respondent in this Consent Agreement are
24 made solely for the final disposition of this matter, and any related administrative
25 proceedings or civil litigation involving the Board and Respondent. Therefore, any
26

1 admissions made by Respondent in this Consent Agreement are not intended for any
2 other use, such as in the context of another regulatory agency's proceedings, or civil or
3 criminal proceedings, whether in the State of Arizona or in any other state or federal
4 court.

5 9. Respondent acknowledges and agrees that, upon signing this Consent
6 Agreement and returning this document to the Board's Executive Director, he may not
7 revoke his acceptance of the Consent Agreement or make any modifications to the
8 document regardless of whether the Consent Agreement has been signed by the
9 Executive Director. Any modification to this original document is ineffective and void
10 unless mutually agreed by the parties in writing.

11 10. Respondent understands that the Consent Agreement shall not become
12 effective unless and until adopted by the Board and signed by its Executive Director.


13 11. If a court of competent jurisdiction rules that any part of this Consent
14 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
15 shall remain in full force and effect.

16 12. Respondent understands and agrees that if the Board does not adopt this
17 Consent Agreement, he will not assert as a defense that the Board's consideration of this
18 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

19 13. Respondent understands that this Consent Agreement is a public record that
20 may be publicly disseminated as a formal action of the Board and may be reported as
21 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
22 Protection Data Bank.

23 14. Respondent understands that any violation of this Consent Agreement
24 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
25 1901.01(C)(16), -1927.01(A)(1).
26

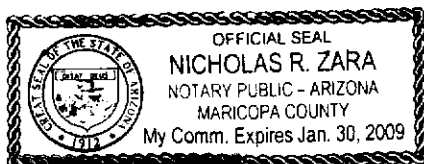
1 ACCEPTED AND AGREED BY RESPONDENT

2 

3 Eric Kesterson

Dated: 4-14-07

4 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
5 this 34th day of April, 2007, by Eric Kesterson.




NOTARY PUBLIC

My Commission expires: 1/30/2009

9

10 **FINDINGS OF FACT**

11 1. The Arizona State Board of Pharmacy ("Board") is the duly constituted
12 authority for licensing and regulating the practice of pharmacy in the State of Arizona.

13 2. Eric Kesterson ("Respondent") holds Arizona Pharmacy Technician
14 License Number 1752.

15 3. During all times relevant to this Complaint, Respondent was employed as a
16 pharmacy technician at Humana Right Source Pharmacy ("Pharmacy") in Phoenix,
17 Arizona.

18 4. On or about May 17, 2006, Pharmacy officials were notified by a
19 technician that a Hydrocodone/APAP 7.5/500mg pill had been discovered in a Kirby
20 Lester machine. The Pharmacy was able to verify that Respondent had been the last
21 individual to use the machine.

22 5. The Pharmacy checked their prescription processing logs to determine
23 whether anyone had attempted to locate an order for the NDC/Drug. It was discovered
24 that someone had made such an attempt and isolated the orders in question. The
25
26

7. Respondent shall obey all federal and state laws, including all statutes and rules governing the practice as a pharmacy technician.

8. When requested by the Board, Respondent shall appear in person before the board to respond to questions or concerns regarding his compliance with this Order.

9. If Respondent violates this order in any way or fails to fulfill or timely complete any of the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, shall revoke Respondent's license. The issue at such a hearing will be limited solely to whether this Order has been violated.

10. Respondent shall appear before the Board at a regularly scheduled Board meeting two years after the effective date of this Order to request that the probation imposed by this order be terminated. Respondent's failure to petition the Board to terminate the probation shall extend the probation period.

DATED this 10th day of May, 2007.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By:

HAL WAND, R.Ph.
Executive Director

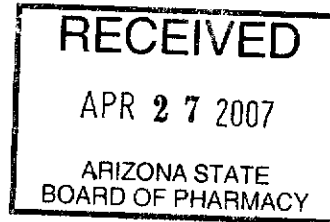
ORIGINAL OF THE FORGOING FILED
this 10th day of May, 2007, with:

Arizona State Board of Pharmacy
4425 W. Olive Avenue, Suite 140
Glendale, Arizona 85302

/ / / /

04/13/07

Eric Kesterson
3319 E. University Dr #327
Mesa, AZ 85213
602-663-1175



Seth Hargraves
ASSISTANT ATTORNEY GENERAL
1275 W. Washington, CIV/LES
Phoenix, AZ 85007
602-542-7033

Dear Mr. Hargraves:

I would like to accept the offer made to me by the Arizona State Board of Pharmacy, and wish to participate in the Board's mandated drug treatment program and two years of probation on my Pharmacy Technician license. I very much appreciate the Board for giving me this opportunity so that I may continue to work as a Pharmacy Technician in the state of Arizona. I promise to fulfill any and all terms and conditions during this two year period so that I may continue to work in the pharmacy industry, as I have for the last 15 years, for many more years to come.

Please let me know how and when to proceed. Again, I sincerely thank you and the Board for giving me this opportunity and a second chance. I will not disappoint you.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be "Eric Kesterson", written over a horizontal line.

Eric William Kesterson